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Subpart A—Definitions; Coverage and Applicability

§ 536.101 General.

(a) Title VIII of Public Law 95–454 (The Civil Service Reform Act of 1978) provides that an employee who is placed in a lower grade as a result of reduction-in-force procedures, or whose position is reduced in grade as a result of reclassification of the position, is entitled to retain for a period of 2 years the grade held immediately before that placement or reduction. It also provides the authority for granting an employee indefinite pay retention. In addition to specifying criteria and conditions for the application of the grade

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and pay retention provisions, the law authorizes the Office of Personnel Management to extend the application of these provisions to other individuals and situations to which they would not otherwise apply.

(b) This part contains the regulations—including extensions, conditions, criteria, and procedures—which the Office of Personnel Management has prescribed for the administration of grade and pay retention. This part supplements and implements the provisions of 5 U.S.C. 5361–5366, and section 801(b) of Public Law 95–454, and must be read together with those sections of law.

§ 536.102 Definitions.

For the purposes of this part:

Demotion at an employee's request means a reduction in grade that is initiated by the employee for his or her benefit, convenience, or personal advantage. A demotion that is caused or influenced by a management action is not considered to be at an employee's request, except that a voluntary demotion in response to a management action directly related to personal cause is considered to be at the employee's request.

Demotion for personal cause means a reduction in grade based on the conduct, character, or unacceptable performance of an employee.

Employee means an employee as defined in 5 U.S.C. 5361 and also an individual who is moved from a position which is not under a covered pay schedule to a position which is under a covered pay schedule provided that the individual's employment immediately prior to the move was on other than a temporary or term basis.

Employment on a temporary or term basis means employment under an appointment having a definite time limitation or designated as temporary or term.

Rate of basic pay means, for any pay system, the rate of pay fixed by law or administrative action for the position held by an employee before any deductions and exclusive of additional pay of any kind such as night or environmental differentials in the case of a prevailing rate employee.

Rate schedule means a specific set of rates within a pay schedule.

Reorganization means the planned elimination, addition or redistribution of functions or duties either wholly within an agency or between agencies.

Representative rate means:

(1) The fourth step of the grade in the case of a position under the General Schedule or the individual's rate under the Senior Executive Service or a position subject to the senior-level pay authority under 5 U.S.C. 5376;

(2) The second rate of the grade of a position under a regular prevailing rate schedule established under subchapter IV of chapter 53 of title 5, United States Code, or in the case of a position with a single rate, the single rate of that position; or

(3) The rate designated as representative of the position by the agency responsible for establishing and adjusting the schedule in the case of a position under a schedule different from those covered in paragraph (1) or (2) of this definition.

Temporary promotion means a promotion with a definite time limitation, and one which the individual is informed in advance is temporary and would normally require that the individual return to his or her permanent position at the expiration of that promotion.

Temporary reassignment means a reassignment with a definite time limitation, and one which the individual is informed in advance is temporary and would normally require that the individual return to his or her permanent position at the expiration of that reassignment.

[45 FR 85656, Dec. 30, 1980, as amended at 50 FR 11795, Mar. 25, 1985; 50 FR 35494, Aug. 30, 1985; 56 FR 18662, Apr. 23, 1991; 58 FR 65537, Dec. 15, 1993; 64 FR 69174, Dec. 10, 1999]

§ 536.103 Coverage and applicability of grade retention.

(a) Grade retention shall apply to an employee who moves to a position in a covered pay schedule which is lower graded than the position held immediately prior to the demotion in the following circumstances:

(1) As a result of reduction-in-force procedures; or

(2) As a result of a reclassification process.

(b) Except as otherwise covered in paragraph (a) of this section, the head of the agency may offer grade retention to eligible employees who are or might be reduced in grade as the result of a reorganization or reclassification decision announced by management in writing. When an employee is offered a position with grade retention in anticipation of a reduction in grade, the agency shall inform the employee in writing that acceptance of the position is not required and that declination of the offer has no effect on the employee's entitlement to grade retention under paragraph (a) of this section if he or she is actually moved to a lower graded position.

(c)(1) An employee who, immediately before being placed in a lower graded position as a result of reduction-in-force procedures, is in a position under a covered pay schedule, is eligible for grade retention only if the employee has served for 52 consecutive weeks or more in a position(s) under a covered pay schedule at a grade(s) higher than the position in which the employee is placed, including service performed by an employee of a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, as defined in 5 U.S.C. 2105(c), who is moved to a position in the civil service employment system of the Department of Defense or the Coast Guard, respectively, without a break in service of more than 3 days.

(2) An employee is eligible for grade retention when his or her position has been reclassified at a lower grade only if the position which is being reduced had been classified at a higher grade(s) for a continuous period of at least 1 year immediately before the reduction.

(3) In situations other than those covered in paragraphs (c)(1) and (c)(2) of this section, an employee is eligible for grade retention if he or she, immediately prior to being placed in the lower grade, has served in a position in any pay schedule for 52 consecutive weeks or more, provided the service was in an agency as defined in 5 U.S.C. 5102 at a grade(s) higher than the position in which the employee is placed,